**THE HONOURABLE SRI JUSTICE V. ESWARAIAH**

**WRIT PETITION No.20802 OF 2006**

**DATED: 23-02-2007**

**BETWEEN**

P. Edukondalu, S/o. P. Rangaiah,
Occ: Government Service,
Office of Commissioner of Horticulture,
Public Gardens, Hyderabad,
R/o.20-122F, Sharadanagar,
Saroornagar, Ranga Reddy District.

...PETITIONER

**AND**

G.I.C. Housing Finance Limited,
Rep. by Area Incharge,
6th Floor, House No.3-5-817 & 818,
United Towers, Basheerbagh,
Hyderabad.

...RESPONDENT

**ORDER:**

Learned counsel for the petitioner submits that the petitioner obtained Home Loan of Rs.8,00,000/- from the respondent financial institution vide file No. G 04064 dated 23.02.2004 agreeing to repay the same at 8.5% interest per annum repayable in 120 installments. He further submits that as the petitioner could not repay the said loan, the respondent has taken coercive steps to seize the attached property of the petitioner by taking necessary directions from the Chief Metropolitan Magistrate, Ranga Reddy District, vide Crl.Misc.No.172 of 2006 dated 17.06.2006. He further submits that the petitioner filed a representation to lift the attachment but the same has not been considered.

2. This Court while admitting the writ petition made the following order in WPMP.No.26340 of 2006:

> "When the matter is listed today there is no representation on behalf of the respondent, though M/s. Ajay Kumar and Associates, Advocates have filed vakalat and their name appears in the cause list.
>
> The principal grievance of the petitioner is that though he has lodged objections to the notice issued to him on 01.02.2006 purporting to be a notice under Sec.13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), such objections having been lodged on 20.03.2006; though has also paid Rs.70,000/- on the said date, the respondent has proceeded to seize the house property of the petitioner and house bearing D.No.20-122F, Plot No.20 (Eastern part), Gaddiannaram Village, Saroornagar Mandal, Ranga Reddy District by securing the coercive process under Sec.14 of the Act; that the respondent has violated the mandatory provisions of Sec.13(3)(A) of the Act and therefore the entire proceedings taken under Sec.14 are invalid. The respondent was obligated, in view of Sec.13(3)(A) of the Act, to communicate within a week from the date of receipt of petitioner's representation dated 20.03.2006 its decision whether it accepts or rejects the petitioner's objections. This has not been done in the assertion. Proceedings either under Sec.13(4) or under Sec.14 ought not to have been taken as the exercise of jurisdiction by the Chief Metropolitan Magistrate or District Magistrate under Sec.14 is available only as an alternative to the remedies available to the secured creditor under Sec.13(4).
>
> *Prima facie* the contention of the petitioner appears plausible and eminently arguable. In any event the petitioner's specific assertion is that his objections dated 20.03.2006 to the respondent's notice dated 13.02.2006 has not been responded to as mandated by Sec.13(3)(A) of the Act.
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> This Court in the absence of the learned counsel for the respondent who is on record having filed his vakalat, is deprived of the assistance and the defence on behalf of the respondent.

In the circumstances above until further orders, there shall be an ad-interim suspension of the order of the court of Chief Metropolitan Magistrate, L.B. Nagar, R.R. District inCrl.Misc.No.172 of 2006 dated 17.06.2006.

Notice."

3. The petitioner, thereafter, filed an application dated 15.02.2007 before the respondent stating that he has obtained housing loan in February 2004 vide File No. G 04064 for of Rs.8,00,000/- and paid a sum of Rs.1,93,464/- vide statement dated 20.03.2006 and a cheque from LIC for Rs.5,000/- was also credited to his loan account.

Hence, a total sum of Rs.1,98,464/- was paid by him as on 30.06.2006 and that he is inclined to pay the total amount of principle i.e. Rs.7,21,382/- along with interest. The respondents have calculated the amount payable by the petitioner arriving at Rs.7,21,382/- towards principle and Rs.54,368/- towards interest up to 28.02.2007.

It is stated that the respondent financial institution has agreed to waive penal interest, cheque not paid amount, foreclosure charges but insisted upon paying the legal expenses of Rs.15,000/-.

4. The petitioner filed WPMP.No.3238 of 2007 on 09.02.2007 seeking a direction to the respondent to receive a sum of Rs.7,66,712/- from him towards full satisfaction of the loan account under File No. G 04064 dated 23.02.2004.

5. Learned counsel for the respondent submits that the petitioner has to pay the legal expenses as the respondent has already accepted to waive penal interest at Rs.30,773/-; cheque not paid amount at Rs.500/- and foreclosure charges at Rs.14,428/- and the respondent insists upon the petitioner to pay legal expenses.

6. I am of the opinion that the respondent cannot compel the petitioner to pay the legal expenses, as it is the duty of the bank to pay to its counsel.

Having regard to the facts and circumstances of the case, the writ petition is disposed of directing the respondent to receive the principal amount of Rs.7,21,382/- and an amount of Rs.54,368/- towards interest up to 28.02.2007, if the entire amount is paid by 28.02.2007. If the said amount is not paid by 28.02.2007, it is open to the respondent financial institution to continue the proceedings in accordance with law. It is also made clear that merely because the petitioner is not paying the legal expenses the respondent cannot desist to pay the legal expenses to its counsel. There shall be no order as to costs.

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V. ESWARAIAH, J

February 22, 2007
Note: Furnish C.C. of the order by 23.02.2007
(**B/o**)
DSK